In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 13633 of 2005

Date of Decision: 22.09.2006

Rubesh Kumar and others

…Petitioners

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Ram Kumar Malik, Advocate,
Mr. D.S. Patwalia, Advocate,
Mr. Anurag Goyal, Advocate,
Mr. Deepak Balyan, Advocate,
Mr. Jagbir Malik, Advocate,
Mr. L.R. Nandal, Advocate,
Mr. Minderjeet Yadav, Advocate,
Mr. Praveen Bhadu, Advocate,
Ms. Alka Chatrath, Advocate,
Ms. Promila Nain, Advocate,
Ms. Rupinder K. Thind, Advocate,
for the petitioner(s).

Mr. Harish Rathee, Sr. DAG, Haryana,
for the respondents.

JUDGMENT

M.M. KUMAR, J. (Oral)

This judgment would dispose of instant petition and 19 other Civil Writ Petitions filed under Article 226 of the Constitution as per the foot note recorded at the end of this judgment. The facts are being referred from C.W.P. No. 13633 of 2005. The petitioners

are JBT Teachers who have been working in the schools administered by Zila Parishads. These schools were with the State Government before 30.3.2001 when these Schools were transferred to Zila Parshads and Municipal Committees. The respondents have again issued a notification dated 10.08.2005 (P-5) transferring these schools back to the Education Department of the respondent State. The notification dated 10.08.2005 has imposed some onerous conditions on the petitioners, who were recruited and appointed by Zila Parishads after taking over on 30.3.2001. It has been prayed that notification dated 10.8.2005 (P-5) be set aside to the extent it has imposed onerous conditions on the petitioners viz. (A) To complete their graduation within five years; (B) pass the examination proposed to be conducted by the Education Department; and (C) Challenge has also been made to the other condition that the petitioners were to be considered new entrants in the Education Department without any weightage to their service rendered in Zila Parishads.

In order to place the controversy in its proper perspective few more facts deserves to be noticed. Before 30.3.2001, there was only one category of Primary School Teachers/JBT Teachers and they used to be governed by the statutory Rules known as 'the Haryana Primary Education (Group 'C') District Cadre Service Rules, 1994 (for brevity, 'the 1994 Rules'). The whole Department of Primary Education was under the administrative control of Education Department, Haryana. However, on 30.3.2001, the functioning and control of the Government Primary Schools was handed over to the Zila Parishads and Municipal Committees . Accordingly, the services of all the then existing JBT teachers were transferred to the respective

Zila Parishads and Municipal Committees by issuance of notification dated 30.3.2001 (P-1). The aforementioned step was taken keeping in view the provisions of Articles 243G and 243W of the Constitution read with Section 21 of the Haryana Panchayati Raj Act, 1994, and Section 66-A of the Haryana Municipal Act, 1973. According to the notification the functioning and control of all the Government Primary Schools in the rural areas in the State of Haryana was transferred to the respective Zila Parishads whereas all Government Primary Schools in the urban areas were transferred to the respective Municipal Committees within their jurisdiction. The aforementioned transfer was subject to various terms and conditions. As many as XIII conditions were imposed but for the purposes of the instant petition, Condition Nos. (iii), (iv), (v), (vii), (viii), (ix), (x) and (xi) are relevant, which are as under:-

> "(iii) Immovable/Movables assets and liabilities shall vest in Zila Parishads/Municipalities for a period of five years in the first instance and thereafter can be considered for regular transfer to these authorities. Vesting/transfer of assets will be done through District Collector after observing necessary formalities. Government will have inherent right to resume the property. Without awarding any compensation for a additions/values added to the property during possession with Zila Parishads/Municipalities. Maintenance/additions in the property will be made by Zila Parishads/Municipalities. The property so vested

will be used only for educational purposes and will not be put for any other use.

(iv) The services of existing teachers are placed at the disposal of Zila Parishads/Municipalities, as the case may be. The terms and conditions of service of existing staff will be protected. They shall continue to receive salary and other allowances as admissible to the Government servants from time to time.

(v) The existing cadre of teachers, on such transfers to Zila Parishads/Municipalities will become diminishing cadre, Government shall not make any appointment after the transfer of Institutions to Zila Parishads/Municipalities. Vacancies arising out of retirements/promotions/other eventualities such as creation of posts etc. will be filled in by the Zila Parishads/Municipalities as per guidelines to be issued by the Government from time to time. Strength of such new teachers will form a new Zila Parishad/Municipality cadre for which they will frame their own rules with the approval of Government.

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(vii) The offices of Block Education Officers and District Primary Education Officer will continue to function as hither to fore, however, they will be

declared ex-officio authorities under the Zila Parishads/Municipalities for discharging the functions in respect of school education to be assigned to Zila Parishad/Municipalities and for the purpose they will be accountable to Zila Parishad/Municipalities.

(viii) Now new school will be opened by the Zila Parishads/Municipalities without the approval of the Government.

(ix) Funds under the State/Centrally aided/Centrally sponsored schemes will be provided by the Government to the Zila Parishads/Municipalities.

(x) Hundred percent funding for the disbursement of salary to the teachers to be appointed by the Zila Parishads/Municipalities will be done by the Government in the form of grant-in-aid.

(xi) Matters pertaining to loans, advances, pension etc. of the existing teachers would remain with the Government."

It is, thus, obvious that practically functional control was given in the hands of Zila Parishads/Municipal Committees by vesting moveable and immovable assets and liabilities in their hands. The arrangement was made for a period of five years and the terms and conditions of service of the then existing staff were protected. It was stipulated that they were to continue to receive salary/other allowances as admissible to the Government servants from time to time. It was further stipulated that the cadre of teacher as it existed

on the date of transfer was to become diminishing cadre and the State Government was not to make any appointment after transfers were made on 30.3.2001. However, vacancies arising out of retirement/ promotions/other eventualities including creation of posts were to be filled up by Zila Parishads/Municipalities as per the guide lines to be issued by the Government. It was also clarified that such new recruits were to constitute Zila Parishad/Municipality cadre for which they were to frame their own Rules with the approval of the Government. The Government was to provide 100% funds for disbursement of salary to the teachers who might be appointed by the Zila Parishads/Municipalities, in the form of grant-in-aid. It is also pertinent to mention that the Development and Panchayat Department of the respondent State framed rules for the JBT Teachers, which are known as "the Haryana Zila Parishad Primary Education Service Rules, 2003" (for brevity, 'the 2003 Rules). However, no rules appear to have been framed for the JBT teachers who were to be recruited by the Municipalities. It is, thus, evident that two categories of JBT teachers have been envisaged by notification dated 30.3.2001, namely, (a) those JBT teachers who were working in the Education Department of the State and were transferred to Zila Parishads/ Municipalities and they were to be governed by the 1994 Rules; and (b) those JBT teachers who were to be recruited by the Zila Parishads subsequently. The teachers recruited by the Zila Parishads were to be governed by the 2003 Rules. It is appropriate to mention that in all the petitions, the petitioners belong to aforementioned category (b) of the JBT teachers as they have been selected and appointed by the Zila Parishads in pursuance to 2003 Rules. It is also appropriate to

mention that all qualifications prescribed in the 2003 Rules for JBT teachers belonging to category (b) are the same which were prescribed by the 1994 Rules and even their mode of selection is the same. Accordingly, the Haryana State Staff Selection Commission, somewhere in July/December 2004 advertised the posts of JBT teachers on the requisition of Zila Parishads. The petitioners who were eligible had applied, selected and were appointed on regular basis on the basis of recommendations made by the Commission. They continued working on regular basis. Copy of one such appointment letter has been placed on record as Annexure P-3.

On 10.8.2005, the respondent State issued another notification by taking a somersault and the earlier notification dated 30.3.2001 was 'quashed' by the respondent State with immediate effect. Accordingly, all moveable and immovable assets which vested in the Zila Parishads/Municipalities by virtue of notification dated 30.3.2001 were to vest back in the Education Department. It was clarified that all assets acquired or liabilities incurred during the functional control of these schools, was to vest in the Education Department with immediate effect i.e. 10.8.2005. The notification has imposed numerous other conditions but the relevant one for deciding the controversy raised in the instant petition are as follows:-

> "3. The services of JBT teachers of Education Department which were placed at the disposal of the Zila Parishads/Municipalities will be taken back in Education Department and orders of declaring this cadre as a diminishing cadre is rescinded.

4. All the JBT teachers recruited by the Development and Panchayats Department/Zila Parishads will be merged in the cadre of JBT teachers of the Education Department, subject to the following terms and conditions, and on such JBT teachers giving an affidavit to the extent that such terms and conditions are acceptable to them. The terms and conditions on which the JBT teachers will be merged in the Education Department are as follows:-

(i) Those primary school teachers who are 10+2 and not Graduate (which is the present prescribed qualification) should complete graduation within a period of 5 years. If they fail to do so their services would be liable to be dispensed with thereafter.

(ii) They should pass a test to be conducted by the Education Department. If they fail to do so their services would be liable to be dispensed with thereafter.

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(vi) After such teachers fulfil conditions (ii), (iii) & (iv) above they will be treated as new entrants in the Education Department from the date of issuance of notification and placed in the pay scale as applicable to the

teachers recruited by the Government and governed by Haryana Primary Education (Group-C) District Cadre Service Rules, 1994."

In all these petitions, conditions at Sr. No. 4(i), (ii) and (vi) are the subject matter of challenge on the principal ground of violation of equality clause as enshrined in Article 14 and 16(1) of the Constitution. It has been asserted that these clauses have carved out a class within a class for the purposes of hostile discrimination by subjecting the petitioners to these onerous conditions.

The justification provided by the respondents in their written statement is that the petitioners belong to the cadre of Zila Parishads/Municipalities and are governed by statutory Rules of 2003. Accordingly, their cadre is different than the one carved out by 1994 Rules. Those Government teachers who have been transferred to Zila Parishads under the notification dated 30.3.2001 (P-1) were given protection in respect of their conditions of service and they were to continue receiving salary and other allowances as admissible to Government servants from time to time. It has further been pointed out that from Academic Session 2000-2001, subject of English was introduced at the stage of Class-I and it was felt that JBT teachers having academic qualification of 10+2 with JBT Course were not able to cope up with teaching of English language properly. Accordingly, an amendment was incorporated on 22.7.2005 and the academic qualification of JBT teachers were modified. According to the amendment the qualification of 10+2 has been replaced by Graduation with English as one of the optional/elective subject with

two years JBT Course or Diploma in Education. A copy of the notification has been placed on record as Annexure R-1. Any person coming within the fold of the cadre of JBT teacher as envisaged by 1994 Rules, amended by notification dated 22.7.2005, is expected to answer all the qualifications. It is also pointed out that condition No. (ii) providing for a test to be conducted by the Department of Education of the respondent State has been withdrawn on 14.10.2005 by issuance of notification (R-III) and, therefore, challenge to condition (ii) does not survive in these petitions. It has further been submitted that the petitioners were getting fixed salary of Rs. 5,000/- or 6,000/- per month and by coming over to the cadre of Government teachers they were to get regular salary admissible to a Government teacher. In that regard it would be pertinent to mention that under the 2003 Rules, the petitioners were to become entitled to regular pay scale of Rs. 4500-7000 after successful completion of their probation period. According to Rule 13 of the 2003 Rules, the petitioners were to remain on probation at a consolidated salary of Rs. 5000/- per month for the first year and Rs. 6,000/- per month for the probation period of second year. Thereafter, they were to become entitled to regular pay scale of Rs. 4500-7000 as is admissible to the Government teachers under the 1994 Rules.

Mr. Ram Kumar Malik, Mr. D.S. Patwalia, Ms. Alka Chatrath, Mr. Jagbir Malik and Mr. Anurag Goyal, learned counsel appearing for the petitioners have argued that for all intent and purposes the petitioners were discharging same nature of duties as were being discharged by the Government JBT teachers from 30.3.2001 to 10.8.2005. According to the learned counsel the

recruitment of the petitioners is also by the same process as was adopted for selection and appointment of the JBT teachers who were appointed under the 1994 Rules, namely, Haryana Subordinate Services Selection Commission. The qualifications for appointment to the post of JBT teachers provided under the 1994 Rules which are applicable to the Government teachers and those provided by 2003 Rules which were applicable to the petitioners were identical till the date of amendment made on 22.7.2005 (R-1). It has been emphasised that if the laudable object of teaching English to the students by acquiring Graduation qualification with English within five years is to be achieved then such a provision has to be applied uniformly to the petitioners as well as to the Government JBT teachers. The petitioners have been picked up for a hostile discrimination as the object of teaching English to the primary school students, would be common between both classes of JBT teachers and they would constitute one class for that purpose. It has further been submitted that the respondent State vide notification dated 10.8.2005 has set aside its earlier notification dated 30.3.2001 (P-1) which include the clause of setting aside the status of diminishing cadre given to the Government JBT teachers. The arguments seems to be that if there was a cadre of 1000 teachers at the time of transferring these teachers in 2001 then the diminishing cadre has been recouped by filling up posts becoming available on account of retirement, termination and promotion etc. and therefore it would continue to be the part of the cadre and the petitioners would be deemed to be appointed to such cadre posts. That would show that the petitioners are one class with

the Government teachers on whom no onerous conditions have been imposed.

It was then submitted that once Government JBT teachers working under the 1994 Rules were transferred to Zila Parishads by declaring them as diminishing cadre, there was hardly any need to amend the Rules on 22.7.2005 because that amendment was not to apply to any Government JBT teacher since all of them had already gone to the Zila Parishads/Municipalities and their cadre was declared as a diminishing cadre. It has been insisted that the amendment is the result of colourable exercise of power and the same was made in anticipation of re-transferring the JBT teachers to the Education Department who were earlier transferred to Zila Parishads.

The other argument advanced by the learned counsel for the petitioners is that the service rendered by the petitioners to Zila Parishads being identical to the service rendered by Government teachers would deserve to count for all purposes including seniority, increments and fixation of pay. In support of their submission reliance has been placed on a Full Bench judgment in the case of **Kartar Singh and others v. State of Punjab, 1989 (4) SLR 340**.

Mr. Harish Rathee, learned State counsel, however, has supported the stand of the respondent State as depicted in the written statement. According to the learned counsel, the English language as a subject has been introduced from academic session 2000-2001 for the students from Class-I on ward and it has been observed that JBT teachers having academic qualification of 10+2 with JBT course were not able to teach English language to the tiny-tots properly. It was experienced that students passing through the primary stage were not

able to read or write English properly. He has emphasised that in the changed scenario the teachers were expected to bring about multi dimensional growth amongst the children and a necessity to replace the academic qualification for appointment of primary school teachers was felt and as a consequence on 22.7.2005 academic qualification of JBT teachers under the 1994 Rules were amended and replaced by requiring that it should be Graduation with English as one of the optional/elective subject with two years JBT course or diploma in education. It has been argued that interest of the petitioners has been completely kept in view and they have been granted five years time to acquire the Graduation qualification.

Mr. Harish Rathee has then submitted that Condition No. 4(vi) in the notification dated 10.8.2005 (R-II) imposed on the petitioners essentially emanates from the fact that the petitioners are to be absorbed in the cadre of Government JBT teachers under the 1994 Rules and once they are to be absorbed then they have to answer all the qualifications which are existing on the date of their absorption. Learned counsel has maintained that the petitioners do not constitute one class with the Government JBT teachers as both belong to two different cadres. The cadre of Government JBT teachers is governed by the 1994 Rules and that of the petitioners is governed by the 2003 Rules. However, it has not been clarified by the learned State counsel as to how the amendment of 22.7.2005 was necessitated when there was no Government JBT teacher available to achieve the laudable object of teaching English to the tiny-tots at the primary stage and then why no such provision was made in 2003 Rules of Zila Parishads. It has also remained enigmatic for the

learned State counsel to answer as to how the aforementioned object could be achieved only by imposing the condition on the petitioners in contra distinction to Government teachers which was to result in two classes one with B.A. With English and others without any graduation qualification. His reply has only been that no condition could be imposed as the Government teachers continues to be governed by the 1994 Rules and their service conditions having been protected were not to be changed to their detriment. It is also not explained as to why no rules have been framed in respect of JBT teachers who were working in Municipal Committees.

Learned State counsel has then argued that there is difference of pay scale of Government JBT teachers and the petitioners, inasmuch as, the petitioners were given a fixed salary of Rs. 5,000/- and Rs. 6,000/- for the first two years of probation whereas the Government teachers have been given the pay scale of Rs. 4500-7000 right from the date of appointment. He has maintained that they would become entitled to the regular pay scale from the date of their transfer to the Government cadre w.e.f. 10.8.2005. He has then submitted that the petitioners have to be considered as fresh entrants if they wish to come within fold of government JBT teachers under 1994 Rules by transfer from their cadre of Zila Parishad envisaged by 2003 Rules. According to learned counsel treating them as a one class with Government teachers would result into considering two distinct cadre employees as one which is impermissible by Articles 14 and 16(1) of the Constitution.

We have thoughtfully considered the submissions made by the learned counsel for the parties. In our view, the following two questions would require determination:-

A) Could the petitioners be treated as new entrant in the Education Department from the date of issuance of notification on 10.8.2005?

B) Whether the condition imposed by the notification dated 10.8.2005 to the effect that petitioners must acquire Graduation qualification within a period of five years or to face termination is violative of Articles 14 and 16(1) of the Constitution, in as much as, the petitioners have been picked up for hostile discrimination vis.a.vis Government JBT Teachers covered by the 1994 Rules?

In order to resolve the controversy, it would be appropriate to compare 1994 Rules and 2003 Rules. Both set of Rules in so far as they are relevant to the instant case in juxta position reads as under:-

1994 Rules	**2003 Rules**
1. Short title and commencement. – (1) These rules may be called the **Haryana Primary Education (Group C) District Cadre Service Rules, 1994**.	**1. Short title, commencement and application**. – (1) These rules may be called the **Haryana Zila Parishad Primary Education Service Rules, 2003**
3. Number and Character of posts. – The district wise Cadre of Service shall comprise the posts shown in **Appendix A** to these rules:	**3. Posts in the Service and their scales of pay**. – (1) The Service shall comprise, the category of posts shown in **Appendix A** to these rules.
Provided that nothing in these rules shall affect the inherent right of the Government to make additions to or reductions in the number of such posts or to create new posts with different designations and scales of pay either permanently or temporarily.	(2) Number and nature of posts shall be specified by the Government in Education Department as per the norms laid down in Education Code. **Provided that** the Government may, from time to time, make addition to or reductions in the category of the Service and the Pay-Scales whether permanently or temporarily.

5. Age. – No person shall be appointed to any post in the Service by direct recruitment who is less than 17 years or more than 40 years of age, on or before the 15th day of the month next preceding the last date of submission of applications to the Board or any other recruiting authority.	**6. Age and physical fitness.** – (1) No person shall be appointed to any post in the Service by direct recruitment, who is less than 18 years and more than 40 years of age on the last date fixed for receipt of applications for that post. Provided that in the case of candidate belonging to Scheduled Castes, Backward Classes and Ex-servicemen the upper age limit shall be such as may be fixed by the Government from time to time in this regard.
6. Appointing authority. – Appointments to any post in the Service shall be made (by?) the District Primary Education Officer of the District concerned.	**4. Appointing Authority.** – All appointment to the service shall be made by the concerned Zila Parishad on recommendation of the Commission: **Provided that** a vacancy which could not be anticipated may be filled in by the concerned Zila Parishad for a period of six months or till a candidate is recommended by the Commission, whichever is earlier, with the prior permission of the Government.
7. Qualifications. – No person shall be appointed to any post in Service, unless he is in possession of qualifications and experience specified in column 3 of **Appendix B** to these rules in the case of direct recruitment and those specified in column 4 of the aforesaid Appendix in the case of appointment other than by direct recruitment.	**9. Qualification.** – No person shall be appointed to any post in Service, unless he is in possession of qualifications and experience specified in column 3 of **Appendix B** in the case of appointment other than by direct recruitment.
9. Method of recruitment. – (1) Recruitment to the Service shall be made, - (a) In the case of Junior Basic Trained Teacher, - (i) by direct recruitment; or (ii) by transfer or deputation of any official already in the service of any State Government or the Government of India; (b) xxx xxx xxx xxx (2) All promotions unless otherwise provided, shall be made on seniority-cum-merit basis and seniority alone shall not confer any right to such promotions.	**8. Method of recruitment.** – (1) Recruitment to the Service shall be made:- (a) In the case of Junior Basic Trained Teacher- (i) by direct recruitment; or (ii) by transfer or deputation of an official already in the Service of any State Government or the Government of India; (b) xxx xxx xxx xxx (2) All promotions unless otherwise provided, shall be made on seniority-cum-merit basis and seniority alone shall not confer any right to such promotions.
10. Probation. – (1) Persons appointed to the post in the service shall remain on probation, for a period of two years, if appointed by direct recruitment and one year, if appointed otherwise:- (a) xxx xxx xxx xxx (b) xxx xxx xxx xxx (c) xxx xxx xxx xxx (2) xxx xxx xxx xxx (3) xxx xxx xxx xxx	**10. Probation.** – (1) Person appointed to the post in the Service shall remain on probation, for a period of two years, if appointed by direct recruitment and one year, if appointed otherwise:- (a) xxx xxx xxx xxx (b) xxx xxx xxx xxx (c) xxx xxx xxx xxx (2) xxx xxx xxx xxx (3) xxx xxx xxx xxx

11. Seniority. – (1) Seniority inter-se of members of the Service shall be determined by the length of continuous service on any post in the Service:

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(2) The seniority of the members of the Service shall be maintained district wise.

(3) xxx xxx xxx xxx

"APPENDIX A" (See rule 3)

Sr. No.	Designation of	Scale of Pay
1	3	7
1.	Junior Basic Trained Teacher	4500-125-6000-EB-125-7000

"APPENDIX B"

(See rule 7)

Sr. No.	Designation of post	Academic qualifications and experience, if any, for direct recruitment	Academic qualification and experience, if any, for appointment other than by direct recruitment
1.	2	3	4
1.	xxx	xxx	xxx xxx

11. Seniority. – (1) Seniority inter-se of members of the Service shall be determined by the length of continuous service on any post in the Service:

xxx xxx xxx xxx

(2) The seniority of the members of the Service shall be maintained Zila Parishad wise.

(3) xxx xxx xxx xxx

Appendix A (See rule 3)

Sr. No.	Designation of	Scale of Pay
1.	Junior Basic Trained Teacher	4500-125-6000-EB-125-7000

Appendix B

(See rule 9)

Sr. No.	Desig-nation of posts	Academic qualifications and experience, if any, for direct recruitment	Academic qualifications and experience, if any, for appointment other than by direct recruitment
1.	2	3	4

2.	Junior Basic Trained Teacher	(i) * Graduate with English as one of the optional/ elective subjects. **Provided that** individuals who have already done JBT after 10+2 will be eligible for a period of 2 years. Such 10+2 individuals, if recruited, shall be required to comply with the condition of passing graduation within a period of 5 years. (ii) Passed two years Junior Basic Training Course or Diploma-in-Education Training Course from Haryana Education Department or its equivalent recognized by the Haryana Government with special training in child psychology and behaviour of child upto the age of 12 years. (iii) Knowledge of Hindi upto Matric Standard. **Note:-** (i) Preference will be given to candidates who possess knowledge of URDU upto Middle Standard for posts of Junior Basic Trained Teachers for Mewat area. Such candidates, if selected, shall	xxx xxx	xxx xxx
1.	Junior Basic Trained Teache r	(i) 10+2 from the Board of School Education, Haryana or its equivalent as recognized by the Board of School Education Haryana; (ii) Passed two years Junior Basic Training Course or Diploma in Education Training Course from Hr. Education Depart-ment or its equivalent recognized by the Hr. Govern-ment with special training in child psychology and behaviour of child upto the age of 12 years; and (iii) Knowledge of Hindi upto Matric Standard. **Note:-** (i) Preference will be given to candidates who possess knowledge of URDU upto Middle Standard for posts of Junior Basic Trained Teachers for Gurgaon and Faridabad. (ii) Professional Training Diploma or Certificate awarded by	xxx xxx	xxx xxx

(*As per amendment vide Education Department Haryana Notification No. G.S.R.7/Const./Art.309/2005, dated 22.07.2005, published in the Haryana Government Gazette L.S. Part-III, dated 22.7.2005 at pp. 289-90)

A perusal of the aforementioned Rules would indicate that both sets of Rules are identical in sum and substance. The qualification for appointment of JBT Teachers under both sets of Rules are the same and their mode of appointment i.e. through Subordinate Services Selection Commission is also the same. There is one insignificant difference with regard to their pay scale. Under the 2003 Rules, applicable to the JBT Teachers of Zila Parishad/Municipal Committees, a JBT Teacher is put on probation for a period of two years and during the first year of probation he is paid a consolidated salary of Rs. 5000/- per month and Rs. 6000/- per month for the second year of his probation. Thereafter, they start getting the same pay scale of Rs. 4500-7000/- per month. Therefore, we find that in contents and substance, the Government JBT Teachers and Zila Parishad JBT Teachers are virtually the same without any significant difference in their qualification, mode of appointment and pay scale.

It is also pertinent to mention that the petitioners came to be appointed in a Zila Parishad through the Subordinate Services Selection Commission on account of declaration made in the notification dated 30.3.2001 (P-1) that the Government JBT Teachers were to constitute a diminishing cadre as is evident from the perusal of Clause-V of the terms and conditions of the notification (P-1). The aforementioned notification declaring the JBT Teachers as diminishing cadre has been quashed by notification dated 10.8.2005

(P-5) as is evident from Clause-3 of that notification. In other words, on account of the vacancies which have been caused in the diminishing cadre of Government JBT Teachers during the period Zila Parishads remained the incharge of all Primary Schools in rural areas, these vacancies were filled up under identical Rules of 2003. The aforementioned diminishing cadre by virtue of notification dated 10.8.2005 now stands 'quashed'. It is admitted position that both Government JBT Teachers and the teachers so recruited by Zila Parishads under the 2003 Rules were interchangeable and performing the same duties. Therefore, it would not be consistent to the provisions of Articles 14 and 16(1) of the Constitution to consider the Zila Parishads JBT Teachers as a separate class then the Government teachers and pick them up for hostile discrimination by treating them differently then the Government teachers.

We are further of the view that there cannot be any seniority dispute between the Zila Parishad JBT Teachers and the Government JBT Teachers, as the former have been inducted in service in 2004, whereas the Government JBT Teachers have been inducted in service on various dates earlier to the issuance of notification dated 30.3.2001 (P-1) transferring their services to Zila Parishads.

In various judgments of the Supreme Court, the necessity to consider the employees of one class as a fresh entrants while merging them with another class on account of the dispute concerning their inter se seniority, such actions have been upheld in order to avoid any adverse effect on the seniority of employees of the cadre with which other employees were sought to be merged. In that

regard, reference may be made to the judgment of Hon'ble the Supreme Court in the case of **State of Gujrat v. C.D.Desai, 1974 (1) S.C.C. 188.** In the case of **Hydro Electric Employees Union U.P. and others v. Sudhir Kumar Sharma and others 1998(6) SCC 706** , the unification of various sub-cadres performing similar duties was upheld. It was found that right from the inception, three categories of employees used to interchange amongst themselves as many of the Meter Readers were initially appointed either for doing the job in the Sub-Station or at the Switchboard. The Meter Readers were found to discharge their duty on the meters fixed for the domestic consumers, the Switch Board Attendants and Sub-Station Operators were required to perform similar duties either at the Sub-Station or at the Switchboard. The regulation merging all the three posts into one cadre was upheld on the aforementioned ground.

A perusal of the judgment shows that in such like matters, the emphasis has to be on the identical nature of the function of various posts and not on their titles. In the present case, the facts are even more glaring in as much as, the JBT Teachers recruited by the Zila Parishads under the 2003 Rules were to work in tandem with Government JBT Teachers who had been transferred in 2001 to Zila Parishads and recruited under the 1994 Rules. The posts were identical and the functions were the same.

It is further appropriate to mention that from the point the cadre started diminishing, it has been recouped by recruitment of similar JBT Teachers by same recruiting agencies under the aegis of Zila Parishads instead of Government Departments. We further find that when the Primary Schools were transferred to Zila Parishads on

30.3.2001, the service conditions of Government JBT Teachers were protected by the Notification dated 30.3.2001 (P-1), as those Government teachers were recruited under the 1994 Rules. However, while 'quashing' the aforementioned notification, the Government has failed to accord any protection to the Zila Parishad JBT Teachers for the reasons best known to it. The Government JBT Teachers and the Zila Parishad JBT Teachers do not show any difference of significant importance warranting a different treatment to the one against the other. Therefore, the condition of treating them fresh entrants without giving the benefit of past service rendered in Zila Parishad cannot be sustained.

We repeatedly asked the learned State Counsel to explain why the amendment dated 22.7.2005 (R-1) requiring a JBT Teacher to be a graduate with English as one of the optional/elective subject was incorporated in the 1994 Rules about 18 days ahead of retransfer on 10.8.2005 especially when all the JBT Teachers with their service conditions protected had already been transferred to Zila Parishads on 30.3.2001 and their cadre was declared as diminishing cadre. There was no one available to be subjected to 1994 Rules when the amendment was made on 10.8.2005. Moreover, during this period, no recruitment to the aforementioned Government JBT teachers cadre could have been made. The learned State Counsel could not tender any plausible explanation except stating that on the basis of experience and after introduction of English as a subject from Class-I, the Primary teachers equipped with Graduation with English as a subject was introduced by way of amendment only on 22.7.2005(R-1). We find the aforementioned explanation is totally unacceptable

because if qualification of Graduation with English was introduced keeping the aforementioned object in view, then at that stage it should have been introduced in the 2003 Rules because the only category surviving as JBT Teachers to be recruited was under the 2003 Rules. At that stage, it was not possible to conclude that such an amendment was likely to achieve the object as all Government Teachers recruited under the 1994 Rules stood transferred to Zila Parishads by notification dated 30.3.2001 (P-1) and their cadre was declared as diminishing cadre. The only conclusion which can be reached is that the amendment was made in the 1994 Rules anticipating its application to the Zila Parishad JBT Teachers, who were to be taken over. Such an amendment did not have any other purpose to serve at that stage.

We are further of the view that on the anvil of Articles 14 and 16(1), the imposition of condition of passing Graduation with English on the petitioners without applying the same to the Government JBT Teachers would not be justified. It is trite to observe that under Article 14 of the Constitution, two conditions need to be satisfied for the classification to be reasonable, namely, (1) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (2) the differentia must have a rational relation to the object sought to be achieved by such an Act. When we applied the aforementioned classical theory of equality (as against the modern concept laid down in **E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3**, to the facts of the present case, it is evident that the classification could only be sustained on an intelligible differentia

that the Zila Parishad JBT Teachers and Government JBT Teachers belong to two different cadres. However, that fallacy we have already adverted to by recording the findings that virtually it is misnomer to identify both the groups of JBT Teachers under different cadres who infact are one. The only other reason justifying the classification disclosed by the respondents is that the subject of English at graduation level has been found to be necessary because English as a subject has been introduced from Class-I. If that be so, then it is not understandable to apply the aforementioned laudable object to the Zila Parishad JBT Teachers like the petitioners and to exempt the Government JBT Teachers. Such a differentia does not have any rational relation to the object sought to be achieved. On facts, we find from the details of the petitioners furnished in Annexure P-4 that a large number of petitioners are already Post-Graduate and Graduate except few of them. In any case, once the petitioners could not be treated as fresh entrant in the service in pursuance of notification dated 10.8.2005 (P-5), then they deemed to be appointed in the year 2004 much before the date of amendment dated 22.7.2005 (R-1). Therefore, the aforementioned amendment would not effect the rights of the parties.

In view of the above, we hold that the clauses 1(i) and 6 (i) of the notification dated 10.8.2005 (R2) are unreasonable, discriminatory and are hereby declared ultra-vires of the Constitution. Accordingly, a direction is issued to the respondents not to enforce those clauses against the petitioners and other similar situated employees. As a consequence, the petitioners would not require a Graduate Degree alongwith English as a optional/compulsory subject,

nor they would be considered as new entrant in the respondent Education Department under the 1994 Rules.

The writ petitions are accordingly allowed. However, in the peculiar facts and circumstances of the case, we do not impose any costs.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

September 22, 2006

Pkapoor/Ravinder

NOTE: Details of Civil Writ Petitions disposed of:

Sr. No.	C.W.P. No.	Parties Name	Counsel for the Petitioner(s)
1.	13677 of 2005	Ravinder and others v. State of Haryana and others	Mr. Anurag Goyal
2.	13789 of 2005	Man Mohan Singh and others v. State of Haryana and others	Mr. Anurag Goyal
3.	14130 of 2005	Dinesh Kumar and others v. State of Haryana and others	Mr. Anurag Goyal
4.	15364 of 2005	Manjeet Singh and others v. State of Haryana and others	Mr. Anurag Goyal
5.	14319 of 2005	Krishan Kumar and others v. State of Haryana and others	Mr. D.S. Patwalia
6.	14096 of 2005	Sunil Kumar and others v. State of Haryana and others	Mr. Deepak Balyan
7.	13757 of 2005	Dinesh Kumar and others v. State of Haryana and others	Mr. Jagbir Malik`
8.	14493 of 2005	Dharamvir Singh and others v. State of Haryana and others	Mr. L.R. Nandal
9.	13969 of 2005	Anil Kumar and others v. State of Haryana and others	Mr. Minderjeet Yadav
10.	13999 of 2005	Naresh Kumar and others v. State of Haryana and others	Mr. Minderjeet Yadav

11.	14027 of 2005	Bajrang Lal and others v. State of Haryana and others	Mr. Praveen Bhadu
12.	14333 of 2005	Narsi Ram and another v. State of Haryana and others	Mr. Praveen Bhadu
13.	13634 of 2005	Sanjay Kumar and others v. State of Haryana and others	Mr. Ram Kumar Malik
14.	13758 of 2005	Balinder and others v. State of Haryana and others	Mr. Ram Kumar Malik
15.	13768 of 2005	Naveen Kumar and others v. State of Haryana and others	Mr. Ram Kumar Malik
16.	13989 of 2005	Gurtej Singh and others v. State of Haryana and others	Mr. Ram Kumar Malik
17.	14099 of 2005	Rajesh Kumar and others v. State of Haryana and others	Ms. Alka Chatrath
18.	14307 of 2005	Devi Sharan and others v. State of Haryana and others	Ms. Promila Nain
19.	13339 of 2006	Kesar Singh v. State of Haryana and others	Ms. Rupinder K. Thind

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